

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3   JOBAL JAY LIVINGSTON,

Case No.: 2:23-cv-01277-APG-NJK

4           Appellant

**Order Affirming Conviction**

5   v.

[ECF No. 1]

6   UNITED STATES OF AMERICA,

7           Appellee  
8

9           Jobal Jay Livingston appeals his conviction for disorderly conduct arising out of an  
10 incident at the Veterans Affairs (VA) hospital in North Las Vegas. Magistrate Judge Nancy  
11 Koppe conducted a bench trial and found Livingston guilty under 38 C.F.R. § 1.218, a  
12 Department of Veterans Affairs regulation. ECF No. 10-1 at 162. Having reviewed the law and  
13 sufficiency of the evidence de novo, I affirm the conviction because there is sufficient evidence  
14 to show that Livingston’s conduct would tend to disrupt the normal operations of the VA facility.

15 **I. BACKGROUND**

16           On December 4, 2021, Livingston was a patient in the mental health unit at the VA  
17 hospital. *Id.* at 19-21. At meal time, Registered Nurse Williams attempted to provide Livingston  
18 with medication. *Id.* at 22-23. In front of other patients, Livingston “slapped the pills on the  
19 floor,” started to curse, yell, scream, and pace, and demanded to leave the hospital. *Id.* at 23-25.  
20 Williams went to find Nurse Practitioner Pallasigui, who had the authority to discharge  
21 Livingston. *Id.* at 25-26. Williams escorted Pallasigui, a social worker, and a mental health  
22 technician (Talag) to the patient room where Livingston was lying in bed. *Id.* at 26, 30. Talag  
23 was asked to stand by and help. *Id.* at 33, 69.

1 Pallasigui testified that while they discussed his discharge, Livingston was “verbally  
2 aggressive, hostile, agitated,” and making derogatory and discriminatory comments. *Id.* at 119.  
3 Livingston was speaking at a volume loud enough to be heard outside the room and by other  
4 patients. *Id.* at 69, 119-20. This concerned Pallasigui because other patients in the unit may have  
5 post-traumatic stress disorder (PTSD) and can be triggered by loud noises. *Id.* at 120. She also  
6 testified that receiving verbal abuse affects her ability to care for other patients. *Id.* at 136.

7 Suddenly, Livingston charged at the social worker. *Id.* at 33. Williams put his arm out  
8 and said, “Stop.” *Id.* at 34. Livingston punched Williams in the arm and kicked Williams in the  
9 chest. *Id.* In response, Williams and Talag restrained Livingston by grabbing his arms and  
10 holding him down. *Id.* at 35. Two other staff members came to help restrain Livingston. *Id.* at  
11 35-36. Other staff called a Code Gray over the hospital announcement system.<sup>1</sup> *Id.* at 35, 85.

12 Williams testified that he restrained Livingston because communication and de-escalation  
13 were not working and because Livingston “became unpredictable.” *Id.* at 36-37. Williams  
14 testified that a patient in Livingston’s situation could run out of the room and harm other  
15 patients, himself, or VA property. *Id.*

16 Staff continued to restrain Livingston for a few minutes until VA police arrived and took  
17 over. *Id.* at 35-37. Talag testified that he “returned to [his] normal duties” after the VA police  
18 took over. *Id.* at 73. Per hospital policy, Williams went to the emergency room after the incident  
19 instead of returning to his normal duties. *Id.* at 38. He had contusions on his left arm and chest.  
20 *Id.* at 38-39. He went home early, missing the last hour or two of his shift. *Id.*

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21  
22 <sup>1</sup> A Code Gray calls for qualified medical staff to respond to a disruptive situation. ECF No. 10-1  
23 at 85. VA police are also required to respond to a Code Gray and to take charge if the situation  
becomes violent. *Id.* at 85, 173. Code Grays are called frequently, a few times each week. *Id.* at  
95, 130.

## 1 II. ANALYSIS

2 I have the same scope of appeal from a judgment of a misdemeanor conviction by a  
 3 magistrate judge as the court of appeals has over an appeal from a judgment made by the district  
 4 court. Fed. R. Crim. P. 58(g)(2)(D); LR IB 3-3. I review de novo claims of insufficient evidence  
 5 and the magistrate judge’s interpretation of the elements of the crime. *United States v. Virgen-*  
 6 *Mendoza*, 91 F.4th 1033, 1041 (9th Cir. 2024); *United States v. McNeil*, 320 F.3d 1034, 1035  
 7 (9th Cir. 2003). “To prevail on his sufficiency of the evidence challenge, [the appellant] must  
 8 show that, viewing the evidence in the light most favorable to the prosecution, no rational trier of  
 9 fact could have found the essential elements of the crime beyond a reasonable doubt.” *United*  
 10 *States v. Agront*, 773 F.3d 192, 199 (9th Cir. 2014).

11 Title 38 C.F.R. § 1.218(a) outlines the “rules and regulations” that apply on VA property.  
 12 In particular, § 1.218(a)(5) prohibits “[d]isturbances,” which is defined in relevant part as  
 13 “[c]onduct on property which creates loud or unusual noise, . . . which otherwise impedes or  
 14 disrupts the performance of official duties by Government employees; [or] which prevents one  
 15 from obtaining medical or other services provided on the property in a timely manner.”

16 Section 1.218(b) outlines the “[s]chedule of offenses and penalties” for “[c]onduct in  
 17 violation of the rules and regulations set forth in paragraph (a) of this section.” In particular,  
 18 § 1.218(b)(11) provides that “[d]isorderly conduct which creates loud, boisterous, and unusual  
 19 noise . . . or which tends to impede or prevent the normal operation of a service or operation of  
 20 the facility” is subject to a prison term of up to six months and a \$250 fine. “Technically,  
 21 subsection (b)(11) provides only a penalty; the substantive offense conduct is defined” in  
 22 subsection (a)(5). *Agront*, 773 F.3d at 195 n.2. Section 1.218(b)(11) “corresponds to §  
 23 1.218(a)(5)’s ‘disturbances’” and is “solely a penalty provision [that] must be read to cover the

1 same conduct prohibited by the substantive provision.” *Id.* at 198. Any conduct that violates  
2 subsection (b)(11) must meet the “controlling standard of conduct,” which is that it “would tend  
3 to disturb the normal operation of a VA facility.” *Id.* at 197. In other words, that conduct must  
4 “pose[] an ‘actual or imminent interference’ with that facility’s operation.” *Id.* at 197 n.5  
5 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 111-12 (1972)).

6 Livingston contends that there was insufficient evidence to show a disruption of the  
7 normal operations of the VA facility. Specifically, he argues that his conduct only incidentally  
8 disrupted the duties of VA staff and that does not satisfy § 1.218(b)(11) because, he argues,  
9 (b)(11) requires a “facility-wide disruption.” ECF No. 10 at 2. Moreover, he argues that his  
10 conduct falls within the normal operation of the VA facility because the evidence shows that  
11 yelling and aggression (including violence) are common and anticipated behaviors for patients in  
12 the mental health unit, VA staff are trained to de-escalate and respond to such behavior, and  
13 Code Grays are a regular occurrence in the hospital.

14 The government responds that there is sufficient evidence of disorderly conduct because  
15 Livingston was verbally and physically aggressive, which caused staff to leave their normal  
16 duties to deal with the situation and caused Williams to report to the emergency room and be  
17 discharged early from his shift. It contends that Magistrate Judge Koppe correctly found that  
18 Livingston violated subsection (b)(11) because his conduct was prohibited per subsection (a)(5).  
19 Lastly, it argues that the VA must serve every veteran patient in the unit suffering from mental  
20 health unit, not just Livingston, and that the frequency of Code Grays does not transform a  
21 disruption into a normal event.

22 Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact  
23 could have found beyond a reasonable doubt that Livingston’s conduct tended to disturb the

1 normal operation of a VA facility. In particular, Livingston's conduct actually interfered with  
2 the VA facility's operation by causing Williams to report to the emergency room and leave his  
3 shift early. Livingston's conduct also caused Talag to leave his normal duties to monitor the  
4 situation. *See Agront*, 773 F.3d at 199 (holding that evidence that staff were drawn away from  
5 their ordinary tasks to monitor an altercation was sufficient to meet the § 1.218(b)(11) standard).

6 Moreover, Livingston's conduct also posed an imminent interference with the VA  
7 facility's operation. A rational trier of fact could find that Livingston's behavior was escalating,  
8 and that he could have exhibited increased aggression, violence, and loudness that would trigger  
9 other patients. *See id.* at 196-97 (noting that §§ 1.218(a)(5) and (b)(11) are designed "to maintain  
10 a calm environment at VA facilities" for the purpose of avoiding psychological reactions from  
11 veteran patients). A rational trier of fact could also find that Livingston's verbal abuse tended to  
12 disturb Pallasigui's ability to provide medical care to her patients. I therefore affirm the  
13 conviction.

### 14 **III. CONCLUSION**

15 I THEREFORE ORDER that appellant Jobal Jay Livingston's appeal [ECF No. 1] is  
16 **DENIED** and his conviction of disorderly conduct is affirmed. The clerk of court is instructed to  
17 enter judgment and close this case.

18 DATED this 29th day of February, 2024.

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22 ANDREW P. GORDON  
23 UNITED STATES DISTRICT JUDGE